

CHAPTER 12
PROCEDURE FOR ENFORCEMENT

[Prior to 7/13/88, see Accountancy, Board of[10]]

193A—12.1(272C,542C) Compliance. The board is empowered to administer Iowa Code chapters 17A, 272C and 542C and the related administrative rules for the protection and well-being of those persons who may rely upon individuals and firms for the performance of public accounting services within the state.

193A—12.2(272C,542C) Complaints.

12.2(1) The board may consider, but is not limited to, the following in determining whether a disciplinary violation may have occurred:

a. Periodic reviews of financial statements submitted to or filed with state and local government agencies in the state of Iowa, which are conducted as part of the board's positive enforcement program.

b. News articles from any source.

c. Reports required to be filed by CPAs and APs under the provisions of rules 193A—15.1(542C) and 15.2(542C). Such reports shall meet the requirements of paragraph 12.2(1)“*e.*”

d. Reports filed with the board by the commissioner of insurance as required by Iowa Code section 272C.4(9).

e. Complaints filed with the board by any member of the public. Such complaints shall be in writing and shall include the following:

(1) The full name, address, and telephone number of the complainant.

(2) The full name, address, and telephone number of the licensee.

(3) A statement of the facts concerning the alleged disciplinary violation.

f. Reports to the board from any regulatory or law enforcement agency from any jurisdiction.

12.2(2) As provided by Iowa Code section 272C.8, a person shall not be civilly liable as a result of filing a report or complaint with the board unless such act is done with malice, nor shall an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

193A—12.3(272C,542C) Conflict of interest. If the subject of a complaint is a member of the board, or if a member of the board has a conflict of interest in any disciplinary matter before the board, that member shall abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193A—12.4(272C,542C) Grounds for disciplinary action. The board may initiate disciplinary action against a CPA, AP, or a firm of CPAs or APs, on any of the following grounds:

12.4(1) For any of the grounds set forth in Iowa Code section 542C.21.

a. A violation of any of the rules of professional conduct set forth in 193A—Chapter 11 is grounds for disciplinary action under Iowa Code section 542C.21(4).

b. When considering alleged violations of Iowa Code section 542C.21(11), the phrase “conduct discreditable to the public accounting profession” shall be construed in light of the following:

The reliance of the public in general and of the business community in particular on sound financial reporting, and on the implication of professional competence which inheres in the authorized use of a legally restricted title relating to the practice of public accountancy, imposes on a CPA or AP engaged in such practice certain obligations both to their clients and the public. These obligations include the obligation to maintain independence of thought and action, to strive continuously to improve one’s professional skills, to observe, where applicable, generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients in confidence, to uphold the standards of the public accountancy profession, and to maintain high standards of personal conduct in all matters affecting one’s fitness to practice public accountancy.

Habitual intoxication or addiction to the use of drugs will be considered as not maintaining a high standard of personal or professional conduct.

12.4(2) For a violation of any of the provisions of Iowa Code section 542C.22.

12.4(3) For a violation of any of the provisions of Iowa Code section 542C.25.

12.4(4) For a violation of Iowa Code subsection 272C.9(2) or 272C.9(3) and any of the provisions of 193A—Chapter 15.

12.4(5) For any of the grounds set forth in Iowa Code section 272C.10.

12.4(6) For failure to comply with an order of the board imposing licensee discipline.

193A—12.5(272C,542C) Investigation of complaints.

12.5(1) When the board receives information pursuant to rule 12.2(272C,542C) that indicates a CPA, AP, or firm of CPAs or APs may have committed an act that is grounds for disciplinary action, it shall be referred to the ethics and enforcement committee.

12.5(2) Confidentiality of complaint and investigative information. All complaint and investigative information received by the board shall be confidential pursuant to Iowa Code section 272C.6(4). Such information shall not be released to any person except as provided in that section.

12.5(3) Upon receipt of such a complaint, the committee shall determine whether a violation may have occurred. If the facts presented constitute a basis for disciplinary action, the committee shall open a disciplinary case against the licensee and investigate the case. If the committee concludes that the complaint does not present facts which constitute a basis for disciplinary action, the committee shall take no further action.

12.5(4) After a disciplinary case has been opened, the committee shall examine the information submitted to determine whether there is probable cause to believe a disciplinary violation has occurred or if additional information is required before it can make such a determination.

12.5(5) If additional information is considered necessary, the committee may assign an investigator to conduct further investigation. Alternatively, the committee may request the department of inspections and appeals to conduct an investigation of the complaint.

12.5(6) In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (disciplinary hearing). In the event a party refuses to obey a subpoena, the board may petition the court for its enforcement.

12.5(7) Upon completion of the investigation, the investigator or the department of inspections and appeals shall present a report to the committee. The committee shall review the report and determine what further action is necessary. The committee may:

- a. Order the matter be further investigated.
- b. Allow the licensee who is the subject of the complaint an opportunity to appear before the committee for an informal discussion regarding the circumstances of the alleged violation.
- c. Determine there is not probable cause to believe a disciplinary violation has occurred, and close the case.
- d. Determine there is probable cause to believe that a disciplinary violation has occurred.

12.5(8) If the committee determines there is probable cause, the committee shall, subject to board approval:

- a. Seek an informal stipulation or settlement of the matter; or
- b. When applicable, take appropriate action under the provisions of Iowa Code section 542C.28 or 542C.29; or
- c. Commence a contested case proceeding by ordering that a statement of charges be filed against the licensee and a contested case hearing be scheduled.

193A—12.6(272C,542C) Informal discussions.

12.6(1) The licensee is not required to attend or participate in the informal discussion. By electing to attend, the licensee waives the right to seek disqualification based upon personal investigation of a board member or staff from participating in making a contested case decision or acting as a presiding officer in a later contested case hearing. The licensee is required to inform the board as to whether or not the licensee will attend the informal discussion.

12.6(2) Because an informal discussion constitutes a part of the committee's investigation of a pending disciplinary case, facts that are discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

12.6(3) The licensee may, but is not required to, be represented by an attorney at the informal discussion.

12.6(4) The informal discussion shall be held in closed session pursuant to Iowa Code section 21.2(2).

12.6(5) The committee may seek an informal stipulation or settlement of the case at the time of the informal discussion. If the parties agree to an informal settlement at the informal discussion, a statement of charges shall be filed simultaneously with the settlement document. In the event the committee does not reach a settlement under this rule, the settlement rules set forth in rule 12.7(272C,542C) are still applicable.

12.6(6) Consent to settlement negotiation by the licensee at an informal discussion constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and rule 12.31(17A) to the extent applicable. Thereafter, but prior to the filing of a statement of charges against the licensee, the prosecuting attorney is authorized to discuss informal settlement with the committee.

193A—12.7(272C,542C) Settlements.

12.7(1) Settlement negotiations may also be initiated after a statement of charges is filed. Neither party is obligated to utilize this procedure to settle the case. Such negotiations may be initiated by the state of Iowa through the prosecuting attorney, by the respondent, or by the board. The chair of the board, or another board member designated by the chair, shall have authority to negotiate on behalf of the board.

12.7(2) The board shall not be involved in negotiation until a written settlement signed by the licensee is submitted to the full board for approval.

12.7(3) Consent to settlement negotiation by the respondent constitutes a waiver of notice and opportunity to be heard pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and rule 12.31(17A) during informal settlement negotiation. Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or designee.

12.7(4) All informal settlement agreements are subject to the approval of a majority of the full board. No informal settlement shall be presented to the board for approval unless it is in final, written form executed by the respondent. If the board fails to approve the informal settlement, it shall be of no force or effect to either party.

12.7(5) The board member who participates in the negotiation of an informal settlement is not disqualified from participating in the adjudication of the contested case.

193A—12.8(17A) Time requirements.

12.8(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

12.8(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

193A—12.9(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

The request for a contested case proceeding should state the name and address of the requester; identify the specified board action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved; and include a short and plain statement of the issues of material fact in dispute.

193A—12.10(272C,542C) Notice of contested case.

12.10(1) *Notice.* The board's notice of hearing shall fix the time and place for hearing and shall contain those items specified in Iowa Code section 17A.12(2). The notice shall also contain the following:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the board or the state and identification of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and
- i. Notification of the time period in which a party may request, pursuant to 1998 Iowa Acts, chapter 1202, section 15(1), and rule 12.13(17A), that the presiding officer be an administrative law judge.
- j. A statement requiring the respondent to submit an answer of the type specified in rule 12.11(272C,542C) within 20 days after receipt of the notice of hearing.

12.10(2) *Service.* The notice of hearing and the statement of charges shall be served on the respondent not less than 30 days prior to the date of hearing either personally or by mailing a copy by registered mail to the last-known address of the respondent.

a. For the purposes of this subrule, "registered mail" means that form of postal delivery, under postal regulations in effect at the time of service, which ensures that a mailing receipt and a record of delivery are obtained. "Registered mail" does not mean that form of postal delivery which provides only for protection against loss or damage, and does not ensure that a receipt and record of delivery are obtained.

b. In the event the respondent is a firm of CPAs or APs, service shall be made upon the managing partner, managing shareholder, or sole proprietor.

12.10(3) *Statement of charges.* The statement of charges shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged and shall be in sufficient detail to enable the respondent to sufficiently prepare a defense. The statement of charges shall specify the statute(s) and any rule(s) which are alleged to have been violated and may also include additional information which the board deems appropriate.

193A—12.11(272C,542C) Form of answer. The answer shall contain the following information:

1. The name, address and telephone number of the respondent.
2. Specific statements regarding any or all allegations in the complaint which shall be in the form of admissions, denials, explanations, remarks or statements of mitigating circumstances.
3. Any additional facts or information the respondent deems relevant to the complaint and which may be of assistance in the ultimate determination of the case.

193A—12.12(272C,542C) Legal representation. Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

193A—12.13(17A) Presiding officer.

12.13(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board or a panel of the board.

12.13(2) The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

12.13(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

12.13(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

12.13(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

193A—12.14(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

193A—12.15(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

193A—12.16(17A) Disqualification.

12.16(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

12.16(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrule 12.31(9).

12.16(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

12.16(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 12.16(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 12.33(17A) and seek a stay under rule 12.36(17A).

193A—12.17(17A) Consolidation—severance.

12.17(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

12.17(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

193A—12.18(17A) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

193A—12.19(17A) Service and filing of pleadings and other papers.

12.19(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the board, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

12.19(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

12.19(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

12.19(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

12.19(5) *Proof of mailing.* Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Accountancy Examining Board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date) (Signature)

193A—12.20(17A) Discovery.

12.20(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

12.20(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 12.20(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

12.20(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

193A—12.21(17A) Subpoenas. In connection with the investigation of a complaint, the board is authorized by law to subpoena books, papers, records, and any other real evidence, whether or not privileged or confidential under law, to help it determine whether it should institute a contested case proceeding (disciplinary hearing). After service of the notice of hearing under rule 12.10(272C,542C), the following procedures are available to the parties in order to obtain relevant and material evidence:

1. Board subpoenas for books, papers, records, and other real evidence will be issued to party upon request. Subpoenas for witnesses may also be obtained. The executive secretary shall issue all subpoenas for both parties upon request. The request, which may be verbal or written, must specify the documents sought to be obtained and the names of the witnesses whose testimony is sought.

2. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

3. In the event of a refusal to obey a subpoena, either party or the board may petition the district court for its enforcement. Upon proper showing, the district court shall order the person to obey the subpoena and, if the person fails to obey the order of the court, the person may be found guilty of contempt of court.

193A—12.22(17A) Motions.

12.22(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

12.22(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

12.22(3) The presiding officer may schedule oral argument on any motion.

12.22(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least five days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

12.22(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 237 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 10 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 12.35(17A) and appeal pursuant to rule 12.34(272C,542C).

193A—12.23(17A) Prehearing conference.

12.23(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit variances from this rule.

12.23(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

12.23(3) In addition to the requirements of subrule 12.23(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

12.23(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

193A—12.24(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

12.24(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

12.24(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

193A—12.25(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with board rules. Unless otherwise provided, a withdrawal shall be with prejudice.

193A—12.26(17A) Intervention.

12.26(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

12.26(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

12.26(3) *Grounds for intervention.* The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

12.26(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

193A—12.27(272C,542C) Hearings.

12.27(1) A hearing may be conducted before the board or a panel of not less than three members of the board who hold permits to practice public accounting in this state.

12.27(2) Panel of nonboard member specialists. When in the opinion of a majority of the board it is desirable to obtain specialists within an area of practice of the public accounting profession when holding disciplinary hearings, the board may appoint a panel of three specialists who are not board members and who hold permits to practice public accounting in this state to make findings of fact and to report to the board. Such findings shall not include any recommendation for or against licensee discipline.

12.27(3) Presiding officer. The board chair or a person designated by the chair shall serve as the presiding officer. The presiding officer shall conduct the hearing and shall have authority to administer oaths, to admit or exclude testimony or other evidence, and to rule on all motions and objections. Either the board or a three-member panel may be assisted by a hearing officer or administrative law judge.

12.27(4) Immunity. The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the hearing panel. The official record of the hearing shall include the reasons for granting the immunity.

12.27(5) Examination of witnesses by board. The presiding officer and other board members have the right to question a witness at any stage of that witness's testimony. Examination of witnesses by board members is subject to objections properly raised in accordance with the rules of evidence set forth in subrule 12.27(7).

12.27(6) Public hearing. The hearing shall be open to the public unless the licensee or attorney for the licensee requests that the hearing be closed.

12.27(7) Evidence. Admissibility of evidence at the hearing shall be governed by Iowa Code section 17A.14.

Copies of documents offered as evidence at the hearing shall be provided to opposing parties. If requested by the board, copies shall also be furnished to each member of the board or hearing panel at the expense of the submitting party.

12.27(8) Record of proceedings. Oral proceedings at a hearing shall be recorded by a certified shorthand reporter. The requirement in Iowa Code section 542C.23(7) that a transcript of the proceedings be filed with the board applies only if a transcript is prepared upon the request of either party. Any party to a proceeding may record, at the party's own expense, stenographically or electronically, any portion or all of the proceedings.

12.27(9) Order of proceedings. Before testimony is presented, the record shall show the identity of any board members present, identity of the administrative law judge, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. Hearings before the board shall generally be conducted in the following order, subject to modification at the discretion of the board.

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state's interest before the board shall make a brief opening statement which will include a summary of charges and the witnesses and documents to support such charges.

c. The respondent(s) shall be offered the opportunity to make an opening statement, which includes the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. A summary, at the close of the evidence on behalf of the state.

f. The presentation of evidence on behalf of the respondent(s).

g. Rebuttal evidence on behalf of the state, if any.

h. Rebuttal evidence on behalf of the respondent(s), if any.

i. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

193A—12.28(272C,542C) Disciplinary sanctions.

12.28(1) The board has authority to impose the following disciplinary sanctions:

a. Revoke a certificate, registration, license, or permit issued by the board. In the event of a revocation, the licensee shall not be allowed to remain a partner or shareholder of a business entity if the law requires all partners or shareholders of such an entity be CPAs or APs.

b. Suspend a certificate, registration, license, or permit issued by the board. A CPA or AP who is under suspension shall refrain, during the period of the suspension, from all facets of the ordinary practice of public accounting.

c. Revoke or suspend the privilege to engage in one or more areas of the practice of public accounting.

d. Impose a period of probation. As a condition to a period of probation, the board may impose terms and conditions deemed appropriate by the board which may include, but are not limited to, the following:

(1) The board may require the licensee to undergo a quality review or peer review. The licensee shall select, subject to approval by the board, a CPA, a firm of CPAs or a review program which is endorsed by the American Institute of Certified Public Accountants. The costs of the review shall be paid by the licensee. The board shall be furnished a copy of the report issued by the reviewing party.

(2) The board may require the licensee to enter into an agreement with a CPA or firm of CPAs to obtain a preissuance review of any audits, compilations, or reviews issued by the licensee during the period of probation. The agreement shall be approved by the board. The board may require the licensee to report regularly concerning the preissuance reviews conducted pursuant to the agreement. Any cost incurred in obtaining preissuance review shall be paid by the licensee.

e. Impose requirements regarding continuing education. The board may specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The board may also specify whether this continuing education be in addition to that routinely required for license renewal.

The board may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a certificate, permit, license, or registration. The board may also specify that current reference materials be obtained and maintained.

f. Required reexamination, using one or more parts of the CPA or AP examinations given to candidates for the CPA certificate or the AP license.

g. Impose civil penalties, the amount of which shall be at the discretion of the board, but which shall not exceed \$1,000. Civil penalties may be imposed for any of the disciplinary violations specified in rule 12.4(272C,542C).

h. Issue a citation and warning.

12.28(2) Voluntary surrender. The board may accept the voluntary surrender of a certificate, permit, or license to resolve a contested case. The board shall not accept a voluntary surrender of a certificate, permit, or license to resolve a pending disciplinary case unless a statement of charges has been filed in the case. Such a voluntary surrender will be considered disciplinary action and shall be published in accordance with rule 12.40(272C,542C).

12.28(3) Notification requirements. Whenever a licensee's certificate, permit or license is revoked, suspended, or voluntarily surrendered under this chapter, the licensee shall:

a. Within 15 days of receipt of the board's final order, notify in writing all clients of the fact that the license has been revoked, suspended, or voluntarily surrendered. Such notice shall advise the client to obtain alternative professional services;

b. Within 30 days of receipt of the board's final order, file with the board copies of the notices sent pursuant to paragraph 12.28(3) "a." Compliance with this requirement shall be a condition for an application for reinstatement.

193A—12.29(17A) Evidence.

12.29(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

12.29(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

12.29(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

12.29(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies may also be furnished to members of the board.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

12.29(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

12.29(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

193A—12.30(17A) Default.

12.30(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

12.30(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

12.30(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by subrule 12.34(3). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

12.30(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

12.30(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

12.30(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

12.30(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 12.33(17A).

12.30(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

12.30(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

12.30(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 12.36(17A).

193A—12.31(17A) Ex parte communication.

12.31(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 12.16(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

12.31(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

12.31(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

12.31(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 12.19(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

12.31(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

12.31(6) The executive secretary or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 12.31(1).

12.31(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 12.24(17A).

12.31(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

12.31(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

12.31(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the division administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

193A—12.32(17A) Recording costs. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

193A—12.33(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

193A—12.34(272C,542C) Final decision.

12.34(1) When five or more members of the board preside over the reception of the evidence at the hearing, the decision is a final decision.

12.34(2) When a panel of three specialists presides over the hearing, a transcript of the proceedings, together with exhibits presented and the findings of fact of the panel, shall be considered by the board at the earliest practicable time. The parties or the parties' attorneys shall, upon notice prescribed by the board, have the opportunity to appear personally to present their positions and arguments to the board. The decision of the board is a final decision.

12.34(3) When a panel of three board members presides over the hearing, the decision is a proposed decision.

a. A proposed decision may be appealed to the board by a party to the decision who is adversely affected. An appeal is commenced by serving on the executive director, either in person or by certified mail, a notice of appeal within 30 days after service of the proposed decision or order on the appealing party. The appealing party shall be the appellant and all other parties to the appeal shall be the appellees.

b. The board may review a proposed decision or order on its motion by serving notice on all parties within 30 days of the issuance of the proposed decision.

c. If the proposed decision is not timely appealed by any party, the proposed decision becomes final.

d. Within seven days after service of the notice of appeal, the appellant shall serve nine copies of its brief in support of the appeal on the executive secretary, and shall furnish an additional copy to each appellee by first-class mail. Any appellee shall have 14 days following service of exceptions and brief to file its brief. Except for the notice of appeal, the time requirements set forth in this rule may be extended by stipulation of the parties or may be extended upon application approved by a member of the board.

e. Oral argument of the appeal is discretionary, but may be required by the board upon its own motion. At the times designated for filing briefs and arguments, either party may request oral argument. If a request for oral argument is granted, or if required by the board, the executive director shall notify all parties of the date, time, and place. The board chair or designee shall preside at the oral argument.

f. The record on appeal shall be the entire record made before the hearing panel.

12.34(4) All parties to a proceeding shall be promptly furnished with a copy of any proposed or final decision either in person or by first-class mail. In addition, either party may request to be notified of the decision by telephone as soon as the decision is reached.

193A—12.35(17A) Applications for rehearing.

12.35(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

12.35(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 12.34(3), the applicant requests an opportunity to submit additional evidence.

12.35(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

12.35(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the certificate of service on all parties.

12.35(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

193A—12.36(17A) Stays of board actions.

12.36(1) *When available.*

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

12.36(2) *When granted.* In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202, section 23.

12.36(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

193A—12.37(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

193A—12.38(17A) Emergency adjudicative proceedings.

12.38(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

12.38(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the board;
- (3) Certified mail to the last address on file with the board;
- (4) First-class mail to the last address on file with the board; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

12.38(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

12.38(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

193A—12.39(272C,542C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

193A—12.40(272C,542C) Publicizing disciplinary action.

12.40(1) Final decisions of the board relating to disciplinary actions, including consent agreements and consent orders are public documents, are available to the public and shall be published in the professional licensing division's newsletter. Publication shall include the name of the licensee disciplined by the board, the nature of the violation(s), and the nature of any formal sanction(s) imposed.

12.40(2) The board shall issue a formal press release in those instances where a certificate, permit, or license has been suspended or revoked.

12.40(3) The board may notify other state boards of accountancy, the National Association of State Boards of Accountancy, any appropriate professional associations, and the news media of disciplinary action taken against an Iowa licensee.

193A—12.41(272C,542C) Reinstatement. Any person whose certificate, permit, or license has been revoked or suspended by the board may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension.

12.41(1) If the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the certification, permit, or license was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of voluntary surrender.

12.41(2) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for the reinstatement of the certificate, permit, or license. All proceedings upon the petition for reinstatement shall be subject to the same rules of procedure as other cases before the board.

12.41(3) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the revocation or suspension no longer exists and that it will be in the public interest for the license to be reinstated. The burden of proof to establish such facts shall be on the respondent.

12.41(4) An application for reinstatement may include a request for a hearing on the issues raised in the application. The hearing on an application for reinstatement shall be a contested case within the meaning of Iowa Code section 17A.12.

12.41(5) The order to grant or deny reinstatement shall include findings of fact and conclusions of law, and must be based upon the affirmative vote of not fewer than five members of the board. If reinstatement is granted, terms and conditions of licensure may be imposed. Such terms and conditions may include restrictions on the licensee's practice. This order will be published as provided for in rule 12.40(272C, 542C).

193A—12.42(272C,542C) Hearing on license denial. If the board, upon receipt of a complete and proper application for initial registration or reciprocal registration, accompanied by the proper fee, shall deny registration to the applicant, the executive secretary shall send written notice to the applicant by regular first-class mail identifying the basis for denial.

12.42(1) An applicant denied registration who desires to contest the denial must request a hearing before the board within 30 days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service postmark or the date of personal service. The request for hearing shall specify the grounds under which the applicant contends that the board erred in denying registration. If a request for hearing is timely made, the board shall issue notice of hearing and conduct a contested case hearing.

12.42(2) Hearings on registration denial shall be open to the public. The burden of presenting evidence and information or documents to support the applicant's position shall be the responsibility of the applicant.

12.42(3) The board, after a hearing on registration denial, may grant or deny the application for registration. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for registration could be granted, if applicable.

12.42(4) The notice of registration denial, request for hearing, notice of hearing, and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, National Association of State Boards of Accountancy and other persons or entities.

12.42(5) Judicial review of a final order denying registration may be sought in accordance with the provisions of Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202, which are applicable to judicial review of any agency's final decision in a contested case.

193A—12.43(272C,542C) Recovery of hearing fees and expenses. The board may assess the CPA or AP certain fees and expenses relating to a disciplinary hearing only if the board finds that the CPA or AP did violate Iowa Code chapter 542C and the rules of the accountancy examining board.

12.43(1) The board may assess an amount up to the following costs under this rule:

- a.* For conducting a disciplinary hearing, an amount not to exceed \$75.
- b.* All applicable costs involved in the transcript including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs.
- c.* All normally accepted witness expenses and fees for a hearing or the taking of depositions. This shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony.
- d.* All normally applicable costs involved in depositions including, but not limited to, the services of the court reporter recording the deposition, transcription, duplication, and postage or delivery costs.
- e.* The board, at its discretion, may assess an appropriate amount up to but not exceeding the \$75 fee established by this subrule and the actual acceptable costs, fees, and expenses involved.

12.43(2) Fees, costs, and expenses assessed pursuant to this rule shall be calculated and may be entered into the disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the CPA or AP.

a. When it is impractical or not possible to include the assessment and time period in the disciplinary order in a timely manner, or if the expenditures occur after the disciplinary order, the board, by a majority vote of the members present, may assess the amount to be reimbursed and the time period in which payment is to be made by the CPA or AP.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have to the end of the sixth month after the date the state of Iowa paid the expenditures to assess the CPA or AP for such expenditure.

12.43(3) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

12.43(4) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall be considered prima facie evidence of a violation of Iowa Code chapter 542C. However, no action may be taken against the CPA or AP without a hearing as provided in this chapter.

193A—12.44(252J) Certificates of noncompliance. The board shall suspend or revoke a certificate of registration upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

12.44(1) The notice required by Iowa Code section 252J.8 shall be served upon the registrant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 56.1. Alternatively, the registrant may accept service personally or through authorized counsel.

12.44(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the registrant.

12.44(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 252J.8 and is directed to notify the registrant that the certificate of registration will be suspended, unless the registration is already suspended on other grounds. In the event a registration is on suspension, the executive secretary shall notify the registrant of the board's intent to revoke the certificate of registration.

12.44(4) Registrants shall keep the board informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

12.44(5) All board fees required for license renewal or reinstatement must be paid by registrants before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 252J.

12.44(6) In the event a registrant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of revocation or suspension of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

12.44(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant or applicant when the certificate of registration is issued or renewed following the board's receipt of a withdrawal of the certificate of noncompliance.

193A—12.45(261) Suspension or revocation of a certificate of registration—student loan. The board shall suspend or revoke a certificate of registration upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code section 261.126. In addition to those procedures, this rule shall apply.

12.45(1) The notice required by Iowa Code section 261.126, shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the registrant may accept service personally or through authorized counsel.

12.45(2) The effective date of revocation or suspension of a certificate of registration, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the registrant.

12.45(3) The board's executive secretary is authorized to prepare and serve the notice required by Iowa Code section 261.126, and is directed to notify the licensee that the certificate of registration will be suspended, unless the certificate of registration is already suspended on other grounds. In the event a certificate of registration is on suspension, the executive secretary shall notify the registrant of the board's intention to revoke the certificate of licensure.

12.45(4) Registrants shall keep the board informed of all court actions and all college student aid commission actions taken under or in connection with Iowa Code chapter 261 and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 261.127, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the college student aid commission.

12.45(5) All board fees required for registration renewal or registration reinstatement must be paid by registrants and all continuing education requirements must be met before a certificate of registration will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 261.

12.45(6) In the event a registrant timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a certificate of registration, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

12.45(7) The board shall notify the registrant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a certificate of registration, and shall similarly notify the registrant when the certificate of registration is reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 252J, 272C and 542C and Iowa Code sections 261.126 and 261.127.

[Filed and effective September 22, 1975 under 17A, C '73]

[Filed 2/1/78, Notice 12/28/77—published 2/22/78, effective 3/29/78]

[Filed 9/27/78, Notice 8/23/78—published 10/18/78, effective 11/22/78]

[Filed 10/9/80, Notice 9/3/80—published 10/29/80, effective 12/3/80]

[Filed emergency 6/16/82—published 7/7/82, effective 6/18/82]

[Filed 6/22/88, Notice 3/9/88—published 7/13/88, effective 8/17/88]

[Filed 12/10/91, Notice 10/30/91—published 1/8/92, effective 2/12/92]

[Filed 12/17/93, Notice 10/13/93—published 1/5/94, effective 2/9/94]

[Filed 4/26/96, Notice 1/3/96—published 5/22/96, effective 6/26/96]

[Filed 10/13/98, Notice 8/12/98—published 11/4/98, effective 12/9/98]

[Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]